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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/131,717 08/10/98 TAMS

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TM02/0103

EXAMINER

FIELDS, K

ART UNIT

PAPER NUMBER

2153

DATE MAILED: 01/03/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/131,717

Applicant(s)  
Tams et al

Examiner  
Kenneth Fields

Group Art Unit  
2153



☒ Responsive to communication(s) filed on Oct 13, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1, 3-14, 17, and 19-29 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1, 3-6, 8-14, 17, and 19-29 is/are rejected.

☒ Claim(s) 7 is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☒ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## DETAILED ACTION

### *Claim Objections*

1. Claim 7 is objected to because of the following informalities: In claim 7, line 11, after “conversation”, insert --in--. Appropriate correction is required.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-6, 8-14, 17 and 19-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abe et al (US 5,966,509).

Abe et al discloses a method of processing and storing data in a computer system and a data storage device, the method comprising: storing first and second data sets on the storage device, the first and second data sets being of different data resolutions and corresponding to overlapping periods of time; operating processor circuitry to receive data collected over a period of time; and operating the processor circuitry to update at least one record in each of the stored first and second sets of records with the received data (cols. 14-28; figs 41-44). Abe et al discloses periodically collecting network data corresponding to monitored network conversations,

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means for modifying the collected data, and recording the data in separate records by the hour, day, month, and year and displaying the records on a graphical user interface data corresponding to the different time periods (figs. 41-44). Abe is silent regarding the method of transferring data to and removing data from the storage device.

Official Notice is taken that FIFO (first-in, first-out) methods of storing and replacing data, buffering systems for data and multiple processors are old and well known in the art. FIFO systems are widely utilized to free space on a storage disc. By removing the oldest data, it is possible to free storage space for the newest data to occupy. Likewise, it is known to fix set amounts of storage space for a FIFO system. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the network monitoring system of Abe with a FIFO storage system. The rationale is as follows: one of ordinary skill in the art would have been motivated to provide the network monitoring system of Abe with a FIFO system in order to free additional storage space for the newest data by removing the oldest data.

Abe discloses network data that includes time stamp information but is silent regarding a buffer to store the data prior to retrieval by the processor circuitry. It is well known in the art that a buffer, like a cache, is a midpoint holding place for data, but exists not so much to accelerate the speed of an activity as to support the coordination of separate activities. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the network monitoring system of Abe with a buffer, whereby processor circuitry is able to retrieve network data from the buffer. The rationale is as follows: one of ordinary skill in the art would

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have been motivated to provide the network monitoring system of Abe with a buffer in order to coordinate data transfer activities.

Abe does not disclose multiple processors for the network monitoring system. It is well known in the art that multiple processors provide added efficiency for the transfer of data between points. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the network monitoring system of Abe with multiple processors, whereby a first processor updated a first set of records and a second processor updated a second set of records. The rationale is as follows: one of ordinary skill in the art would have been motivated to provide the data storage device of Abe with multiple processors in order to increase the speed and efficiency of the data transfer process.

#### ***Allowable Subject Matter***

4. Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

5. Applicant's arguments filed 10/13/00 have been fully considered but they are not persuasive.

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Applicant accurately describes the various data gathering techniques utilized in the Abe et al patent. In particular, Applicant addresses several approaches of gathering data which make it possible to reduce the necessary storage capacity of the storage unit (see page 9 of response).

Applicant asserts that the Abe et al patent utilizes the above specifications to limit the amount of collected data but does not disclose the use of a FIFO (first-in, first-out) data structure. Applicant also asserts that while FIFO methods of storing and replacing data may be well known, Applicant's invention is not rendered obvious. Examiner agrees that Abe et al does not disclose the use of a FIFO data structure but maintains that it would have been obvious to one of ordinary skill in the art to utilize such a structure. While Abe et al utilizes various techniques to reduce the storage capacity of the storage unit, eventually the storage unit will become full. In this case, a FIFO data structure would provide a means to free up additional storage space by overwriting the oldest data in storage.

Applicant further asserts that a FIFO data structure is complementary to the method taught in the Abe et al patent, and therefore different from the Abel et al patent (see page 11 of response). The Examiner notes that a complementary method is not necessarily a different method. The Examiner agrees that a FIFO data structure is complementary to the method taught in the Abe et al patent; i.e., it will improve upon the method described in Abe et al. In this case, a FIFO data structure would complement the methods described in Abe et al by providing a means to free up additional storage space in the event that the storage unit becomes full. Thus, as FIFO data structures are old and well known in the art, the examiner maintains the position that it

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would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the network management system of Abel et al with a FIFO data structure.

Applicant asserts that the present invention does not rely on specifications to limit the amount of collected data, but can collect data for all the traffic. The Examiner recognizes this difference but maintains that one of ordinary skill in the art would have been motivated to utilize a FIFO data structure in conjunction with the data collection method described in Abe et al. Limitations drawn to the collection of data for all traffic should be included within the claims in order to properly distinguish over Abe et al.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Fields whose telephone number is (703) 308-4954.

The fax phone number for this art unit is (703) 305-7201. Any inquiry of a general nature of relating to the status of this application or proceeding should be directed to the technology center receptionist whose telephone number is (703) 305-3900.

*KF*

Kenneth Fields  
January 2, 2001

*Glenton B. Burgess*  
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